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Supreme Court of the United States

October Term, 1971

PIPEFITTERS LOCAL UNION No. 562, *et al.*,
Petitioners

v.

UNITED STATES OF AMERICA

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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This brief *amicus* in support of the position of the petitioners is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) with the consent of the parties as provided for in Rule 42(2) of the Rules of this Court.

INTEREST OF THE AFL-CIO

The AFL-CIO is a federation of 121 national and international labor unions having a total membership of approximately 13,500,000 working men and women.

Organized labor considers the right to associate to promote political interests to be a fundamental constitutional

freedom, and believes that full utilization of this right is both a civic duty and a practical necessity. For the trade union movement knows that its ability successfully to represent its members at the bargaining table depends on its ability to preserve, strengthen and supplement laws such as the National Labor Relations Act, 29 U.S.C. § 141 *et seq.*; the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; the Walsh-Healy Act, 41 U.S.C. § 35 *et seq.*; and the Davis-Bacon Act, 40 U.S.C. § 276(a) *et seq.*

As the means of accomplishing their political objectives, many unions have set up labor political committees as an integral subdivision of the union itself. These political arms of organized labor serve a dual function: utilizing dues, they engage in educational activity directed at the union's members; and utilizing political donations tendered by their members, which are kept in separate segregated funds, they channel a flow of contributions and expenditures in connection with federal elections. Labor has structured its political activities in this fashion because the language and legislative history of 18 U.S.C. § 610, the decisions of this Court, and the stated views of the Department of Justice have made it perfectly plain that this course of conduct is lawful.

The courts below held that only "separate and distinct entities [which] . . . would not constitute labor organizations" may make contributions in connection with federal elections. A. 1134. This ruling, if sustained, would require far-reaching changes in labor's political activities which would be detrimental to the best interests of trade unions and their members; and it would also open the possibility that unions and their officers might be charged

with violating the criminal law by following a course widely and rationally believed to be completely lawful. In light of these considerations, the interest of the AFL-CIO is manifest.

ARGUMENT

The instant case was submitted to the jury on the theory that the Government satisfies the burden placed upon it by 18 U.S.C. § 610 if it proves that a federal political contribution "is in fact and in the final analysis made by the [indicted] labor organization." A. 1132. Both the District Court's jury instructions and the Court of Appeals' opinion make it crystal clear that, insofar as the lower courts were concerned, "the essential elements of a § 610 offense are (1) contribution or expenditure, (2) by a labor organization, (3) for the purpose of active electioneering, (4) in connection with an election for named federal offices described in the statute" (A. 1133), and that the Government is not required to demonstrate that such contributions or expenditures were financed by union dues (A. 1132-1134).

It is our position that Congress' sole intent in enacting § 610 was to forbid contributions and expenditures[1] financed by union dues; and that it was not part of the legislative purpose underlying that Section to prohibit such

[1] The exact content of the terms "contribution and expenditure" as used in § 610 and the exact line of demarcation between the two are matters of considerable complexity. See, e.g., *United States* v. *CIO*, 335 U.S. 106; *United States* v. *International Union UAW*, 352 U.S. 567. However, in the instant case it is not denied that contributions were made. Thus we do not treat with the question of the extent to which § 610 covers the full range of activities that could be said to have political ramifications.

contributions and expenditures by labor political committees financed by donations from individual workers tendered for the direct support of political activity.[2] This, too, was the stated position of Senator Taft in the debates on § 610 and of the Government in its brief to this Court in *United States* v. *International Union UAW*, 352 U.S. 567, and is the clear implication of this Court's opinions in *United States* v. *CIO*, 335 U.S. 106, 125, and *International Union UAW*, 352 U.S. at 592. See pp. 9-10, 13-15 *infra*. And based on these authoritative pronouncements labor political committees have openly made federal political contributions and expenditures financed by individual political donations for over twenty years.

To obtain a conviction in the instant case, the Government was, therefore, required to prove beyond a reasonable

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[2] The term "union dues" as used herein refers to payments that must be made as a condition of continued membership and/or employment. This definition follows from the Department of Justice's conclusion that the term "membership dues" in § 302 of the Taft-Hartley Act includes the initiation fees, assessments, and periodic dues which must be paid as "incidents of membership" (22 LRRM 47), and this Court's holding in *NLRB* v. *General Motors*, 373 U.S. 734, that the term "periodic dues" in § 8(a)(3) covers the agency shop fee required of non-members as a condition of employment.

In contrast, as Senator Taft stated in the Senate debate on § 610, the political donations that unions may utilize for contributions and expenditures are payments "made directly to the support of a labor political organization" by workers "who know what the money is to be used for" and who have not been "forced to contribute" (93 Cong. Rec. 6440, see p. 10, *infra*): in other words, voluntary payments tendered for the express purpose of supporting union political activity which the worker may make or not without forfeiting union membership or employment rights.

doubt (cf. *In Re Winship*, 398 U.S. 358) that the political contributions admittedly made by the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund were financed by union dues; it was not sufficient to simply prove that the Political Fund was a labor organization.[3] By relieving the Government of the burden of proving this essential element of the crime charged, the courts below committed plain error.[4]

1(a) Only "political committees," entities which have "a chairman and a treasurer" (2 U.S.C. § 242), and which keep the accounts and records, and file the reports, required by 2 U.S.C. §§ 242 & 244, may make or receive political contributions or expenditures in connection with a federal elec-

[3] Section 610 also prohibits the utilization of corporate treasury funds for the making of contributions and expenditures while allowing corporate political committees to collect and expend political donations. Because of the nature of this prosecution, our sole reference throughout will be to the situation of labor organizations. However, our analysis of § 610 is, of course, fully applicable to a case involving a corporation.

[4] The Court of Appeals was divided as to whether the Petitioners had adequately preserved their objections to the jury instructions on appeal. A. 1156-1159, 1166-1178. It is unnecessary, however, to pursue the inquiry into that question at this stage of the instant proceeding. For this "Court has the power to notice a 'plain error' though it is not assigned or specified." *Silber* v. *United States*, 370 U.S. 717, 718. And as stated in *Screws* v. *United States*, 325 U.S. 91, 107:

> "Where the error is so fundamental as not to submit to the jury the essential ingredients of the only offense on which the conviction could rest, we think it is necessary to take note of it on our own motion. Even those guilty of the most heinous offenses are entitled to a fair trial. Whatever the degree of guilt, those charged with a Federal crime are entitled to be tried by the standards of guilt which Congress has prescribed."

tion in two or more states. 2 U.S.C. § 241(c); 18 U.S.C. § 591.[5] As the legislative history confirms, § 610 means that all political committees, including those which have no connection with a labor organization, are barred from utilizing funds drawn from union dues to make a federal political contribution or expenditure. See 93 Cong. Rec. 6438.[6] Thus the crux of the dispute here is whether unions may establish and direct the activities of labor political committees which utilize donations tendered by individual workers with the express purpose of supporting union political activities. For the lower courts proceeded on the premise that only "separate and distinct entities [which] . . . would not constitute a labor organization" (A. 1134) may make contributions and expenditures and that a political committee which is an integral part of a union may not make contributions, even though "the payments to the [political] fund may have been made voluntarily by . . . all of the contributors thereto . . ." (A. 1133, n. 1). Thus, as the Government aptly

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[5] Since national and international unions carry on their political activities in more than one state and have therefore established their political committees in conformity with the foregoing provisions, we shall for simplicity's sake refer throughout to contributions and expenditures by labor political committees.

[6] "Mr. BARKLEY . . . . [S]uppose the National Association of Manufacturers, out of the funds contributed to it, bought a page in a newspaper, and advertised for or against some candidate . . . Would they be prohibited, under the present law, or under the conference bill, out of funds contributed by corporations into the general fund of the association, from buying newspaper space to advocate or oppose a candidate for public office, directly or indirectly . . ."

"Mr. TAFT . . . [S]o long as the money comes from corporations, and with their knowledge, I think it would be clearly illegal . . . and they would be participating as corporations in spending for political purposes."

noted in its Brief In Opposition (at p. 18), the jury in the instant case was instructed to find a violation if it came to the conclusion that the Political Fund in question here "was in truth a union operation" even though none of the contributions made by that Fund were financed by union dues.

(b) To be sure, the language of § 610[7] will bear the interpretation placed on it by the courts below. Where a political committee is part and parcel of a labor organization, it would be sheer formalism to permit a contribution by the committee that the union itself would be prohibited from making. See n. 6, *supra*. Thus, if the intent of Congress had really been to reach all contributions and expenditures made in the name of a union, without regard to the source of the funds utilized, it would follow that proof that a labor organization controlled a political committee, and that the committee made a contribution, would be sufficient to make out a violation of § 610.

But the possibility of such a reading is not, of course, the end of the matter. For the language of § 610 is equally subject to another interpretation. In common parlance, an organization is said to make a contribution only if it is utilizing its own treasury funds. If the organization is simply aggregating individual donations and passing them on to the intended beneficiary, the normal conception is that it is the individual donors rather than the organization who are the contributors. As Mr. Justice Frankfurter put the point during the oral argument in *International Union UAW*, 352 U.S. 567:

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[7] "It is unlawful . . . for . . . any labor organization to make a contribution or expenditure in connection with any [federal] election . . ."

> "You don't need [the legislative history of § 610] to reach [the] conclusion [that labor union contributions financed by voluntary donations are not prohibited by the law]. If you will just read the statute, 'any labor organization that makes a contribution'—if [the unions] are just the conduit of other people's money, then [they] are not making the contribution." Transcript Of The Oral Argument in No. 44, October Term 1956, p. 59.

And when it is consulted, the legislative history demonstrates that it is Justice Frankfurter's readings of § 610, rather than that adopted below, which "reconstitute[s] the gamut of values current at the time when the words were uttered." *National Woodwork Mfrs. Assoc.* v. *NLRB*, 386 U.S. 612, 620, quoting Judge Learned Hand.

(c) Section 610, as it presently appears, became law as part of the Labor Management Relations Act of 1947, 29 U.S.C. § 141 *et seq.* (Taft-Hartley).[8] The original Senate version of the LMRA, S. 1126, 80th Cong., 1st Sess., did not include this provision; it was, however, included in the House bill as § 304 of H.R. 3020, 80th Cong., 1st Sess.[9] The

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[8] The antecedents of § 610 are fully described in *International Union UAW*, 352 U.S. at 570-587.

[9] The extremely sparse legislative history in the House throws little light on the intent of the supporters of § 610 in that body. House Rept. No. 245 on H.R. 3020, p. 46, simply tracks the provision and contains no discussion of its implications; there was no House debate on this Section. Indeed, the only statement setting forth a rationale for § 610 was made by Representative Robsion after the House had voted to override President Truman's veto. 93 Cong. Rec. 6220. And Representative Robsion's remarks, which stress the theme that it is unfair to the minority to allow unions to use general funds which have been paid in by all of the members

Senate conferees, who were under the leadership of Senator Taft, agreed to accede to the House as to § 610's inclusion in Taft-Hartley. House Conf. Rept. No. 510 on H.R. 3020, 80th Cong., 1st Sess., pp. 67-68. A broad-gauged Senate debate followed that decision, consisting of a lengthy dialogue exploring the ramifications of § 610, between Senator Taft supporting and explicating the conferees' action, and Senators Magnuson, Pepper, Barkley, Kilgore and Taylor opposing the conferees' decision. See 93 Cong. Rec. 6436-6440, 6445-6448; see also *id.* at 6522-6523 (Senators Ellender and Pepper).[10] During this discussion Senator Taft assured the Senate, in the most explicit terms, that "labor political organizations" could "receive . . . and spend . . . direct contributions" by union members and that the purpose of § 610 was simply to prohibit contributions and expenditures financed by the "members' dues." And Senator Taft's representations make it plain that these "labor political organizations" could lawfully be an integral part of a union, set up by the union and administered by the union's officers; they were not required to be "separate and distinct entit[ies]" free of union control. In summarizing his construction of the statute the Senator stated:

> "[U]nions can do as was done last year, organize something like the PAC, a political organization, and receive direct contributions, just so long as members

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regardless of their political views, to support a candidate, are, of course, consistent with the view that union political activity supported by individual political donations is permissible.

[10] The essence of this debate is quoted and discussed in *CIO*, 335 U.S. at 113-123.

of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for such purpose . . . We will assume that 60 percent of a union's employees are for a Republican candidate and 40 percent are for a Democratic candidate. Does the Senator [Magnuson of Washington] think the union members should be forced to contribute, without being asked to do so specifically, and without having a right to withdraw their payments, to the election of someone whom they do not favor? . . . Why should they be forced to contribute money for the election of someone to whose election they are opposed? If they are asked to contribute directly . . . to the support of a labor political organization, they know what their money is to be used for and presumably approve it. From such contribution the organization can spend all the money it wants to with respect to such matters. But the prohibition is against labor unions using their members' dues for political purposes, which is exactly the same as the prohibition against a corporation using its stockholders' money for political purposes, and perhaps in violation of the wishes of many of its stockholders." 93 Cong. Rec. 6440.[11]

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[11] The position that the legality of contributions and expenditures financed by individual donations made for the purpose of supporting union political activity should be distinguished from such contributions and expenditures financed by union dues was common ground for the members of the Republican leadership in charge of Taft-Hartley. Thus the statement by Senator Taft just quoted echoes the views expressed by Senators Ball and Ferguson in Senate Rept. No. 101, 79th Cong. 1st Sess. p. 24:

> "[The] use of union funds to support a particular candidate or course of political action is wrong in that it opens the way for use of money paid in by individuals for political action which they, as a minority would oppose, [we therefore] believe the Federal law should be clarified so that the prohibi-

Senator Taft's approving reference to PAC (the Congress of Industrial Organization's Political Action Committee) in the foregoing is especially instructive. From the moment of its establishment in 1943, CIO-PAC was the most active of the labor political committees and was regarded as the prototype of all such committees. Because of its importance it had been the subject of three congressional investigations by 1947. See House Rept. No. 2093, 78th Cong., 2nd Sess., pp. 4-6; Senate Rept. No. 101, 79th Cong., 1st Sess., pp. 20-24; House Rept. No. 2737, 79th Cong., 2nd Sess., p. 30. The foregoing Reports leave no doubt that CIO-PAC was, as the CIO candidly admitted in a letter reprinted in Senate Rept. No. 101, *supra*, p. 22, "an instrumentality" of the CIO, and not a "separate and distinct" entity.[12] As the Senate Report notes (at pp. 20-22):

> "On July 7, 1943, the executive board of the Congress of Industrial Organizations organized the Political Action Committe and charged it with the task of conducting a program of political education. The Congress of Industrial Organizations, meeting in conven-

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tion on use of such union funds would apply to primary elections and political conventions and to expenditures as well as contributions by unions . . . If the Political Action Committee had been organized on a voluntary basis and obtained its funds from voluntary individual contributions from the beginning, there could be no quarrel with its activities or program and in fact both are desirable in a democracy."

[12] Senate Rept. No. 101, *supra*, pp. 57-58, 72-73 (discussing Senator Taft's complaints about aspects of the campaign tactics employed by PAC in opposition to his 1944 bid for reelection) also emphasizes the point that the Senator's reference to PAC were to an organization he had been required to deal with in partisan political combat and not a lifeless abstraction of minor academic interest to him.

tion at Philadelphia, Pa., in November 1943, approved the program of the Political Action Committee.

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"Originally the Political Actions Committee received its funds from trade-unions affiliated with the Congress of Industrial Organizations. The money was transferred from the union treasuries after the general executive board of the union had approved the action . . . [These union funds were supplemented by] voluntary contributions in the sum of $1 from the individual members of the Congress of Industrial Organizations.

* * * * *

"The seventh annual Congress of Industrial Organizations convention, held at Chicago in November 1944, voted to continue the Political Action Committee and expand its organization under the chairmanship of Sidney Hillman. The committee was instructed to intensify its program of political education and to prepare the ground work for extensive participation in the local, State, and congressional elections of 1946."

Moreover, while Senate Rept. No. 101 does not emphasize the point, it was a matter of public record, and common knowledge: first, that the original leaders of CIO-PAC were the Presidents of the Amalgamated Clothing Workers (ACW), the Automobile Workers, the Rubber Workers and the Electrical Workers (UE), and the Vice President of the Steelworkers; and, second, that in 1946 when Sidney Hillman of the ACW, who was PAC's first chairman, died, that "the committee, by action of the CIO Executive Board, was enlarged to include the vice presidents of the CIO; and an executive board, consisting of the presidents and secretary-treasurers of the five largest [CIO] unions and a director" was formed. Kroll, *The CIO-PAC* in

Hardeman & Neufeld, Eds., The House of Labor, 118-120.[13] In light of this compelling evidence of the closest interrelationship, it was only natural that the Senate Committee investigating the 1944 elections took the view that CIO-PAC's activities were covered by the Smith-Connally Act,[14] and concluded that PAC had "function[ed] within the law" in utilizing union dues to make expenditures and primary contributions on the ground that Smith-Connally reached neither primary elections nor expenditures. Senate Rept. No. 101, *supra*, at p. 23.

The short of the matter is that Senator Taft's statements plainly demonstrate that a labor political committee created by and administered by a union is entitled to make federal political contributions and expenditures financed by political donations from workers. In light of the fact that he was required to secure sufficient support to override a certain veto, Senator Taft's limiting explanations of the scope of the various prohibitions of Taft-Hartley are to be accorded the most substantial weight. See, e.g., *ANPA* v. *NLRB*, 345 U.S. 100, 107-111; *Bus Employees* v. *Wisconsin Board*, 340 U.S. 383, 392 n. 15, 395 n. 21. Thus, while there has not been an occasion for a square holding, this Court has twice indicated that § 610 does not prohibit union contributions and expenditures financed by voluntary money. In *CIO*, 335 U.S. at 123, it was noted that "Senator Taft stated on the Senate floor that funds voluntarily contributed for elec-

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[13] Mr. Kroll was the CIO-PAC's first director.

[14] "It is unlawful for any . . . labor organization to make a contribution in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for . . ."

tion purposes might be used without violating the section . . ." And in *International Union, UAW,* in demarcating the matters to be decided on remand, the Court stated the first issue as follows: "[W]as the broadcast paid for out of the general dues of the union membership or may the funds be fairly said to have been obtained on a voluntary basis?" (352 U.S. at 592).

In fact, this construction of §610 is so plainly compelled by the legislative history that the Government in *International Union UAW* explicitly conceded:

> "Actual experience demonstrates that the statute, under the construction given it by the Court in the *C.I.O.* decision, has not silenced the political voice of labor unions. It has, instead, proved to be a regulatory measure which has made it possible to discriminate between the legitimate expression of the union's views to its membership, for which general funds may properly be used, and more purely political activities, for which only special funds contributed voluntarily by the membership are properly used.
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> "Under the *C.I.O.* decision, the general funds of the union may be used for a wide variety of political activities. Even active political endorsement is permissible through the medium of regular union newspapers and other house organs directed primarily to the membership. It is only when the union undertakes active electioneering, on behalf of particular federal candidates and designed to reach the public at large, that general funds of all the members may not be used. Such activities must, under the statute, be financed instead by the voluntary contributions of those union members whose views coincide with the official union position." Brief

for the United States in No. 44 October Term 1956, pp. 37-38, 51.

And, of course, neither the language of § 610 nor the relevant legislative history has changed in the interim.

2(a) The foregoing, we submit, conclusively establishes that the decision below is contrary to Congress' intent. But even assuming *arguendo* that the legislative history does not, as we believe, demand the narrower construction of that Section advocated herein, there can be no doubt that the Senate debates demonstrate that our reading of § 610 is a rational and permissible one. And this is sufficient to require the rejection of the lower court's broad interpretation of § 610. For, as this Court stated in *CIO*, the first case testing the validity of the provision:

> "The obligation rests . . . upon this Court in construing congressional enactments to take care to interpret them so as to avoid a danger of unconstitutionality.
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> "It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity." 335 U.S. at 120-121 & n. 20.

And, as we now demonstrate, § 610 is unconstitutional if construed to outlaw all federal contributions and expenditures by a labor organization.

(b) Organized workers have a set of distinct economic interests which they can protect effectively only by engaging in political activity. The manner in which the federal

government exercises its broad powers to regulate the economy is a crucial determinant of the ability of union members to achieve the job security at fair wages in a decent work place which is their objective. The decisions reached by the officials selected in federal elections and their appointees as to the level of the federal minimum wage, the nature of federal safety rules, the metes and bounds of the right to strike, the range of issues open to collective negotiation, and even, as recent events indicate, the extent to which benefits specified in a negotiated agreement between labor and management are to be enjoyed, all have a direct and immediate effect on the day-to-day conduct of labor relations. Moreover, viewed in a broader context, the quest for job security is as much affected by this country's trade policy as it is by a no-subcontracting clause, and the desire for a better standard of living by general monetary and fiscal policy as by the hourly wage rate set in a collective agreement. This direct interrelationship between political activity and basic union economic objectives is, of course, even more manifest in the case of government employees. Thus, as Mr. Justice Frankfurter stated in *Machinists* v. *Street,* 367 U.S. 740, 814-816 (dissenting opinion, footnotes omitted):

> "If higher wages and shorter hours are prime ends of a union in bargaining collectively, these goals may often be more effectively achieved by lobbying and the support of sympathetic candidates."
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> "The notion that economic and political concerns are separable is pre-Victorian . . . It is not true in life that political protection is irrelevant to, and insulated from, economic interests. It is not true for industry or finance. Neither is it true for labor . . . Fifty years ago

this Court held that there was no connection between outlawry of 'yellow dog contracts' on interstate railroads and interstate commerce, and therefore found unconstitutional legislation directed against the evils of these agreements. Is it any more consonant with the facts of life today, than was this holding in *Adair* v. *United States*, 208 U.S. 161, to say that the tax policies of the National Government—the scheme of rates and exemptions—have no close relation to the wages of workers; that legislative developments like the Tennessee Valley Authority do not intimately touch the lives of workers within their respective regions; that national measures furthering health and education do not directly bear on the lives of industrial workers; that candidates who support these movements do not stand in different relation to labor's narrowest economic interests than avowed opponents of these measures?" [15]

(c) Workers look at their union as the natural instru-

[15] In *Street* the issue that divided the Court was whether a holding that unions had the right to use dues collected under a union shop agreement to support candidates opposed by a minority of the members would violate the First Amendment rights of the dissenters. And we do not read the majority opinion as rejecting the point that there is an inextricable interrelationship between political and economic action made in the portion of the dissent just quoted. Rather, it proceeds on the premise that the First Amendment rights of the majority must be balanced against the First Amendment rights of the dissenters, and that the "[railroad] unions must not support [political] activities, against the expressed wishes of a dissenting employee, with his exacted money" (367 U.S. at 770). Since the only issue here is whether Congress can bar unions from utilizing political donations tendered by union members who agree with, rather than dissent from, the union's political program, the result reached in *Street* is not contrary to our argument. Compare 367 U.S. at 788-789, 796 (Mr. Justice Black dissenting).

ment for the advancement and protection of their economic well being. Indeed, the labor movement is the only on-going institution in our society, organized and controlled by working people, that fulfills that function. Unions were "organized out of the necessities of [their members'] situation" (*American Steel Foundries* v. *Tri-City Trades Council*, 257 U.S. 184, 209) and "it would be difficult, even with hostile eyes, to read the history of trade unionism except in terms of voluntary associations formed to meet pressing needs in a complex society" (*Local 60 Carpenters* v. *NLRB*, 365 U.S. 651, 656).

In meeting these "pressing needs", union have never limited their efforts to collective bargaining. From the first they have recognized that organized labor has no choice other than an active political role and that:

> "They are automatically in politics because they exist under a legal and political system which has been generally critical of union activities. The conspiracy suit and the injunction judge have been a problem for unions from earliest times. A minimum of political activity is essential in order that unions may be able to engage in collective bargaining on even terms." Reynolds, Labor Economics and Labor Relations, pp. 80-81.

For this reason:

> "American labor's initial role in shaping legislation dates back 130 years. With the coming of the AFL in 1886, labor on a national scale was committed not to act as a class party but to maintain a program of political action in furtherance of its industrial standards."
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> * * * *
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> "The expenditures revealed by the AFL-CIO Execu-

> tive Council Reports emphasize that labor's participation in urging legislation and candidacies is a major one . . . The passage of the Adamson Act in 1916, establishing the eight-hour day for the railroad industry, affords positive proof that labor may achieve its desired result through legislation after bargaining techniques fail." *Street*, 367 U.S. at 812-814 (Frankfurter J. dissenting, footnotes omitted). Compare *Mine Workers* v. *Pennington*, 381 U.S. 657, 669-672.[16]

And in the context of group litigation programs designed to assure effective implementation of the Federal Employers' Liability Act and state workmen's compensation laws, this Court has explicitly recognized that historically unions have been the "cooperative" medium through which workers "obtain meaningful access to the courts." *Transportation Union* v. *Michigan Bar*, 401 U.S. 576, 586; see also *Trainmen* v. *Virginia Bar*, 377 U.S. 1; *Mine Workers* v. *Illinois Bar*, 389 U.S. 217.

(d) The Eighth Circuit itself has held that "union membership is protected by the right of association under the First . . . Amendment. *Thomas* v. *Collins*, 323 U.S. 516." *AFSCME* v. *Woodward*, 406 F.2d 137, 139. Accord: *McLaughlin* v. *Tilendis*, 398 F.2d 287 (C.A. 7); *Orr* v. *Thorpe*, 427 F.2d 1129 (C.A. 5). The members' right to utilize their union to advance their position in the political arena is, as just demonstrated (pp. 15-17 *supra*), an integral and indispensable component of that membership right.

It is settled that "the Constitution protects the associa-

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[16] For a detailed historical survey of union political activity from its colonial beginning to the present, see the Brief for the AFL-CIO As Amicus Curiae in *Street*, No. 258, October Term, 1959, pp. 14-28.

tional rights of the members of [a] union . . . to consult with each other in a fraternal organization . . . for the lawful purpose of helping and advising one another in asserting" their rights in judicial proceedings. *Trainmen,* 377 U.S. at 5-6, 8. It follows ineluctably that the First Amendment also protects the members' right to utilize their fraternal organization as the means by which they participate in the election process. Plainly, the latter is no less "a form of political expression." *NAACP* v. *Button,* 371 U.S. 415, 429. And the "right of individuals to associate for the advancement of political beliefs . . . rank[s] among our most precious [First Amendment] freedoms." *Williams* v. *Rhodes,* 393 U.S. 23, 30. Support of a labor political committee, the purpose of which is to forward the candidacy of those who are sympathetic to the interest of union members, is an elemental exercise of that right.

If § 610 is construed to forbid union contributions and expenditures financed by their members' donations made for the direct support of political activity, that Section would constitute an absolute bar to the exercise of the members' First Amendment right to utilize the form of political association they prefer. Such a blanket prohibition can be justified, if at all, only by "a subordinating interest which is compelling" (*Bates* v. *Little Rock,* 361 U.S. 516, 524) which has been pursued by a means that neither "broadly stifle[s] fundamental personal liberties when the end can be more narrowly achieved" (*Shelton* v. *Tucker,* 364 U.S. 479, 488) nor places "substantially unequal burdens . . . on the right to associate . . . for the advancement of political goals" (*Williams* v. *Rhodes,* 393 U.S. at 31).

The objectives of § 610, as this Court's opinion in *CIO*

and *International Union UAW* indicate, were "to reduce undue institutional influence by unions on federal elections, to preserve the purity of such elections against the use of aggregated wealth, and to protect union members holding political views contrary to the unions." Br. in Op. p. 14. None of these provides the necessary justification for a prohibition on union political contributions and expenditures financed by voluntary money and not by dues.

Unions limited to financing such contributions and expenditures through donations "made directly to the support of a labor political organization" by workers "who know what the money is to be used for" and who have not been "forced to contribute" (93 Cong. Rec. 6440 (Sen. Taft)) stand in the same position as any other association. The full extent of any unique authority possessed by labor organizations is the power to require dues payments as a condition of employment (see § 8(a)(3) of Taft-Hartley) or of membership in an exclusive bargaining representative (see § 9(a)). This is the only basis upon which they can exact support from dissenting members and compile "aggregated wealth" with which to exert "an undue institutional interest" on elections. And there is no statute which prevents the National Association of Manufacturers, the American Medical Association, the American Farm Bureau, or any other traditional multi-purpose association, which is recognized as the spokesman for its members, from soliciting or receiving political donations from businessmen, doctors and farmers, etc. Thus none of the foregoing groups are limited to engaging in political activity through "separate and distinct" political organizations which must draw their funds from "spontaneous" rather than solicited donations

(Br. in Op. p. 12), and are forbidden from drawing upon the talents and influence of their established leaders (A. 1146-1147, n. 3).

The First Amendment puts it beyond Congress's power to prohibit organized workers from engaging in forms of associational political activity which is indistinguishable from that permitted all other segments of the society. For in politics as in wage negotiations, "a single employee is helpless in dealing" with his adversaries (*American Steel Foundries*, 257 U.S. at 209).[17] "And any unjustified discrimination in determining who may participate in political affairs . . . undermines the legitimacy of representative government." *Kramer* v. *Union Free School District*, 395 U.S. 621, 626. This is a necessary corollary of the long-settled principle that laws which discriminate between government approved and disapproved speech are inconsistent with the First Amendment. *Schacht* v. *United States*, 398 U.S. 58, 62-63; *Niemotko* v. *Maryland*, 340 U.S. 268, 272. Moreover, the rule against the imposition of "substantially unequal burdens" is particularly applicable where, as here, there is a "less drastic means" which would equalize those burdens of achieving Congress' basic purpose. Only a construction of § 610 which confines that Section to the prohibition of contributions and expenditures

[17] In the 1968 election 263 individuals with business occupations made contributions of over $10,000 each for a total of $6.7 million. Alexander, Financing the 1968 Election, App. G, pp. 325-329. This of course was just a fraction of the total of all business contributions. During that election "37 national level labor related political committees reported expenditures of $7.1 million." *Id.* at p. 194. Thus 263 businessmen balanced the efforts of some 16 million workingmen and women.

financed by union dues is consistent with these principles.[18]

[18] The Government cites two cases, *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, and *NLRB* v. *Gissel Packing Co.*, 395 U.S. 575, in support of its argument that § 610 as construed by the courts below is constitutional. Br. in Op. pp. 14-15. But those authorities cut against, rather than support, its position.

Red Lion stands for the proposition that it is permissible for the Government to increase the opportunity of individuals "to communicate with the public" (395 U.S. at 392) if they have suffered personal attacks, or if they are "the political opponents of those endorsed by" a broadcaster, and to reduce the advantages that accrue to licensees by virtue of their "preferred position" (*id.* at 400), because:

> "It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee . . . '[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.'" *Id.* at 390.

Thus *Red Lion* does not justify a construction of § 610 which would stifle union access to the public forum, and which for that reason would be "inconsistent with the First Amendment goal of producing an informed public capable of conducting its own affairs." *Id.* at 392.

It is equally plain that Taft-Hartley's interdiction of "threats of reprisal" (see §§ 8(a)(1), 8(b)(1)(A) and 8(c)) as construed in *Gissel*, 395 U.S. at 616-620, does not justify the complete outlawry of all union solicitation of political donations decreed by the lower courts. On the contrary, as this Court specifically noted in *Gissel*, Congress added § 8(c), in 1947, to "implement the First Amendment," and by virtue of both § 8(c) and the First Amendment "an employer's free speech right to communicate his views to his employees is firmly established and cannot be infringed by a union or the Board." *Id.* at 617. Thus in enacting § 8(c) Congress was careful to preserve a wide area for the exercise of free speech. The legislative history demonstrates that the Congressional intent underlying § 610 was to preserve an equally wide area for the right of free association. Compare *CIO*, 335 U.S. at 120.

CONCLUSION

For the above-stated reasons, as well as those developed by the petitioners, the convictions should be reversed.

Respectfully submitted,

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